Supreme Court U.S.

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No.

IN THE

Supreme Court of the United States

RANDALL J. LYNN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

PETER J. STRIANSE
Counsel of Record
TUNE, ENTREKIN & WHITE, P.C.
Attorneys for Petitioner
First American Center
21st Floor
Nashville, Tennessee 37238
(615) 244-2770

152894

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

4788

QUESTIONS PRESENTED FOR REVIEW

I. Whether a factually unwarranted deliberate ignorance jury instruction violates a criminal defendant's fundamental right to a fair trial?

II. Whether the government's outrageous conduct in concealing the criminal nature of a civil tax audit violates a criminal defendant's due process rights?

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Petitioner Randall J. Lynn respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unreported. (App. A). The Judgment In A Criminal Case entered by the district court is attached. (App. B).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit ("Court of Appeals") was entered on February 19, 1999. The Court of Appeals denied a timely petition for rehearing and for rehearing *en banc* April 9, 1999. (App. C). This petition for writ of certiorari was filed within 90 days of the denial of rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Sometime in 1980, Petitioner Randall J. Lynn (hereafter "Petitioner" or "Mr. Lynn") had the opportunity to become involved in the amusement machine business. Around 1985,

Mr. Lynn began to operate a company called R & B Amusement, which supplied jukeboxes, pool tables and video games to bars, restaurants, small stores and entertainment centers (this company was later renamed RANCO). In essence, RANCO provided games, and service on those games, to entertainment establishments in return for a 50/50 spilt of all money spent on the machines. Included within the games provided by RANCO were various types of "video poker machines." These machines made up less than 10 percent of RANCO's inventory. RANCO was a legitimate business. Mr. Lynn registered his business with county and state authorities, ran advertisements in the Yellow Pages, hired a law firm to handle accounting functions, paid federal employee tax, and never made any effort to hide the nature of his business.

When Mr. Lynn first began operating RANCO, a police captain in Chattanooga was also heavily involved in the amusement machine business and he also employed a 50/50 split method of generating revenue. In 1988, Mr. Lynn, along with several other operators of amusement games (including "video poker machines"), had an occasion to meet with Bradley County, Tennessee, Sheriff Dan Gilley, the highest ranking law enforcement officer of the county where Mr. Lynn and RANCO operated. At this meeting, the Sheriff told those present that he did not have a problem with their businesses. Mr. Lynn also saw the Sheriff on several occasions when he visited a competitor's business where there were "video poker machines" lined up against the wall. Mr. Lynn also employed an individual as a route man who was on "work release" from a local jail. Due to the nature of work release, a prison official visited RANCO to verify the type of work performed, and Mr. Lynn fully disclosed the nature of the business to the official. No prison

or state official ever objected to the arrangement. Also, over a 12 year span (from 1982 to 1994), Petitioner Lynn knew of no action by police against owners/vendors of video poker machines.

In April of 1991, Mr. Lynn submitted to a complete and thorough audit by the IRS which lasted over 30 months. During the course of the protracted IRS audit, Mr. Lynn revealed the nature of his business, his method of income (including the 50/50 split he shared with individuals who leased the poker machines), and his number of employees. An employee of Mr. Lynn testified that he was directed by Mr. Lynn to cooperate fully with the IRS and simply "tell the truth." An IRS agent visited Mr. Lynn's business and "left no stone unturned."

In March of 1994, Sheriff Gilley, despite his history of inaction against "poker machines," sent out a letter concerning the amusement games. On July 23, 1996, the federal government indicted Mr. Lynn. The indictment charged Mr. Lynn with knowingly and willfully conducting an illegal gambling business (Count One, 18 U.S.C. § 1955 and 18 U.S.C. § 2), knowingly conducting financial transactions (involving the proceeds of the illegal gambling business) with the intent of promoting the illegal gambling business (Counts Two through Forty-Six, 18 U.S.C. § 1956(a)(1)(A)(I) and 18 U.S.C. § 2), and knowingly conducting financial transactions (involving the proceeds of an illegal gambling business) designed to conceal the nature of the proceeds from the illegal gambling business (Counts Forty-Seven through Eighty-One, 18 U.S.C. § 1956(a)(1)(b)(I) and 18 U.S.C. § 2). Count Eighty-Two charged that all property involved in the charged felony offenses was subject to forfeiture.

Mr. Lynn's jury trial commenced on February 18, 1997 before the Honorable R. Allan Edgar, United States District Judge. On February 24, 1997, the jury returned a verdict of guilty as to Counts One through Eighty-One. However, the government dismissed Count 82 following a jury dead-lock on the forfeiture issue and a mistrial on that count. On June 2, 1997, Judge Edgar sentenced Mr. Lynn to the custody of the Federal Bureau of Prisons for a term of 67 months and a fine in the amount of $25,000. Mr. Lynn filed a timely notice of appeal on June 5, 1997 challenging his conviction and the sentence imposed by the district court. The Court of Appeals affirmed the district court.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED TO RESOLVE A SPLIT AMONG THE CIRCUITS CONCERNING AN IMPORTANT CONSTITUTIONAL QUESTION.

Although the Sixth Circuit has expressly condoned the use of a "deliberate ignorance" jury instruction,[1] there is clearly a disagreement among the circuits as to its propriety. The use of a "deliberate ignorance" or "conscious avoidance" jury instruction has been strongly disapproved of by the Fifth, Eighth, Ninth, and Eleventh Circuits. *United States v. Ojebode*, 957 F.2d 1218, 1229 (5th Cir. 1992); *United States v. Barnhart*, 979 F.2d 647, 652 (8th Cir. 1992); *United States v. Murrieta-Berjarano*, 552 F.2d 1323,

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1. *United States v. Lee*, 991 F.2d 343 (6th Cir. 1993); Sixth Circuit Jury Instruction 2.09.

1325 (9th Cir. 1955); *United States v. Stone*, 9 F.3d 934 (11th Cir. 1993). These appellate courts have found error in the giving of such instruction in part because of the substantial danger that jurors will misunderstand and be confused by the instruction and will incorrectly apply a negligence, recklessness, or "stupidity" standard. *United States v. Cartwright*, 6 F.3d 301 (5th Cir. 1993).

In circuits where the instruction has been approved, the appellate courts agree that an adequate factual predicate must be established at trial to support the issuance of a "deliberate ignorance" charge to the jury.[2] The "deliberate

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2. *United States v. Civelli*, 883 F.2d 191 (2nd Cir. 1989) (court held that an adequate factual predicate for the issuance of a conscious avoidance charge had been established at trial where the surrounding circumstances were such that, in the opinion of the court, a reasonable person could have concluded that the defendant, who was charged with violation of narcotics laws, would have been apprised of the unlawful nature of his conduct); *United States v. Caminos*, 770 F.2d 361 (3rd Cir. 1985) (trial record warranted the issuance of a conscious avoidance charge to the jury where the disproportionate amount of money spent by the defendant and his compatriots, who were charged with violation of drug or narcotics laws, to effectuate a simple importation of inexpensive wood carvings would have alerted the defendant, had he not ignored the probability, that something other than the wood carving was involved); *United States v. Abbas*, 74 F.3d 506 (4th Cir. 1996) (jury was properly instructed on willful blindness; defendant asserted lack of knowledge that charged transaction involved heroin, and witnesses stated that defendant knew suitcase contained heroin and that he had actively participated in transaction and negotiations and discussed future transactions); *United States v. Herrero*, 893 F.2d 1512 (7th Cir. 1990) (an adequate factual predicate was presented to justify the presentation to the jury of a conscious avoidance instruction as regarded its deliberation over

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ignorance" charge is appropriate where evidence shows the defendant attempted to escape conviction "by deliberately closing his eyes to the obvious risk that he is engaging in unlawful conduct." *United States v. Gullett*, 713 F.2d 1203, 1212 (6th Cir. 1983), *cert. denied*, 464 U.S. 1069 (1984). Such an instruction is warranted only when evidence shows "the defendant consciously attempted to escape confirmation of conditions or events he strongly suspected to exist." *United States v. Lara-Velasquez*, 919 F.2d 946, 951 (5th Cir. 1990). The instruction should be used with caution, however, because of the possibility that "juries will convict on a basis akin to a standard of negligence: that the defendant should have known that the conduct was illegal." *United States v. Rivera*, 926 F.2d 1564, 1571 (11th Cir. 1991). The "deliberate ignorance" instruction is "rarely appropriate, however, because it is a rare occasion when

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the defendant's involvement in narcotics trafficking where the following evidence had been introduced at trial: the defendant admitted that he had participated in criminal drug transactions and that he was associated with the drug conspiracy group; the defendant drove around the country in vehicles loaded with cocaine and with cocaine sales proceeds; and the defendant denied knowledge of the group's illegal activities); *United States v. Ochoa-Fabian*, 935 F.2d 1139 (10th Cir. 1991) (trial court had properly given deliberate ignorance instructions, where: (1) the defendant was stopped at the U.S. border driving a pickup truck with a camper shell, along with two passengers; (2) the border agent detected a strong odor of perfume or deodorant which he believed was used to mask the odor of marijuana; (3) the defendant stated that he was going to California to look for work; (4) the bed of the pickup was freshly carpeted, containing only a spare tire and a six-pack of beer; (5) there was no luggage in the vehicle; and (6) one of the passengers did not have a permit to travel more than 25 miles from the border).

the prosecution can present evidence that the defendant deliberately avoided knowledge." *United States v. Francisco-Lopez*, 939 F.2d 1405, 1409 (10th Cir. 1991). Thus, appellate courts have held that the instruction should be limited to situations where the evidence shows that: (1) the defendant was subjectively aware of a high probability of the existence of the illegal conduct; and (2) the defendant purposely contrived to avoid learning of the illegal conduct. *Lara-Velasquez*, 919 F.2d at 951. The instruction is proper only where:

> sufficient independent evidence of deliberate avoidance of knowledge has been admitted. . . . [T]he same fact or facts cannot be used to prove both actual knowledge and deliberate indifference because the two are mutually exclusive concepts. If evidence proves the defendant actually knew an operant fact, the same evidence could not also prove he was ignorant of that fact. Logic simply defies that result.

Francisco-Lopez, 939 F.2d at 1410.

In the present case, there was no evidence which established actions of willful blindness or deliberate ignorance by Petitioner Lynn. He conceded that his conduct may have impacted State misdemeanor statutes but maintained that local law enforcement had led him to believe that the misdemeanor statutes were not being enforced in his part of the State. Because the government did not establish an adequate factual predicate at trial to support

the issuance of a "deliberate ignorance" charge, it was clear error for the district court to have given the instruction.[3]

"The danger in giving the instruction where there is evidence of direct knowledge but no evidence of avoidance of knowledge is that the jury could still convict a defendant who merely should have known about the criminal venture." *United States v. Manriquez Arbizo*, 833 F.2d 244, 249 (10th Cir. 1987). In addition, courts must studiously guard against the danger of shifting the burden to the defendant to prove his or her innocence. *See Murrieta-Bejarano*, 552 F.2d at 1325 ("The effect of a [deliberate ignorance] instruction in a case in which no facts point to deliberate ignorance may be to create a presumption of guilt."); *cf. Sandstrom v. Montana*, 442 U.S. 510, 521, 99 S. Ct. 2450, 2458, 61 L. Ed. 2d 39 (1979) (disapproving of jury instructions that contain presumptions which shift the burden of proof of an element of a crime to the defendant). By instructing the jury on "deliberate ignorance" when unwarranted by the underlying facts, the district court invaded the province of the jury, shifted the burden to Petitioner Lynn to prove his innocence and reduced the government's burden of proof to a mere negligence standard.

Moreover, an erroneous jury instruction is harmless only when the reviewing court can conclude that the erroneous presumption did not contribute to the jury's verdict. *Rose v. Clark*, 478 U.S. 570, 580-81, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986) (*citing Chapman v.*

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3. The giving of such an instruction robbed Petitioner Lynn of his good faith/entrapment by estoppel defense and was clear error.

California, 386 U.S. 18 (1967)).[4] Here, the erroneous presumption created by the factually unsupported

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4. *Compare United States v. Perez-Tosta*, 36 F.3d 1552, 1565 (11th Cir. 1994) (error in including deliberate ignorance instruction in absence of evidence showing deliberate ignorance harmless when jury could easily have found actual knowledge) *and United States v. Cicero*, 22 F.3d 1156, 1161-62 (D.C. Cir. 1994) (error in instruction about precision with which government would have to prove date of crime harmless when jury would have found same way) *with Yates v. Evatt*, 500 U.S. 391, 408-11 (1991) (reversal required when erroneous jury instructions may have contributed to guilty verdict); *United States v. MacDonald & Watson Waste Oil Co.*, 933 F.2d 35, 55 n.20 (1st Cir. 1991) (reversal required because jury instruction that proof that employee of hazardous waste disposal facility responsible corporate officer conclusively proved employee had knowledge of illegal acts erroneous and error not harmless beyond reasonable doubt); *United States v. Melendez*, 90 F.3d 18, 21-22 (2d Cir. 1996) (reversal of conviction for drug trafficking crime with thirty year enhancement for using or carrying machine gun required when jury instruction included too broad definition of "use" and impossible to determine whether verdict rested on legally sufficient theory); *Gilbert v. Moore*, 121 F.3d 144, 149 (4th Cir. 1997) (reversal required when jury instruction created rebuttable presumption of implied malice in capital murder trial); *United States v. Thomas*, 86 F.3d 647, 650-51 (7th Cir.) (reversal required when court erroneously instructed jury that "use" of firearm included providing person with security and confidence to commit crime because court not convinced properly instructed jury would have convicted), *cert. denied*, 117 S. Ct. 392 (1996); *United States v. Baumgardner*, 85 F.3d 1305, 1309-10 (8th Cir. 1996) (reversal required when erroneous jury instruction omitted materiality, thus removing essential element from jury's deliberation because not harmless beyond reasonable doubt); *United States v. Spring*, 80 F.3d 1450, 1466 (10th Cir.) (reversal required when jury instruction erroneously explained "carrying" element in prosecution for aiding and abetting in using or carrying

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"deliberate ignorance" instruction undoubtedly contributed to the jury's verdict.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS DECIDED AN IMPORTANT CONSTITUTIONAL QUESTION IN A MANNER THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

Petitioner submits that the Court of Appeals' decision is contrary to the letter and spirit of *United States v. Russell*, 411 U.S. 423 (1973); and *United States v. Powell*, 379 U.S. 48 (1964).

The Internal Revenue Service, acting through Civil Revenue Agent Scott Kennedy, improperly and in bad faith, used its civil investigatory powers to gather information for a criminal investigation of Petitioner Lynn in violation of his Fifth Amendment due process rights. Repeated denials of the existence of a criminal investigation throughout a thirty-month civil audit, combined with IRS documents,

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firearm during commission of bank robbery), *cert. denied*, 117 S. Ct. 385 (1996); *United States v. Ruiz*, 59 F.3d 1151, 1155 (11th Cir.) (reversal required when court erroneously denied instruction on mistake-of-fact defense when defense not covered by existing instruction and denial seriously impaired defense because not harmless beyond reasonable doubt), *cert. denied*, 116 S. Ct. 956 (1996) *and United States v. Rawlings*, 73 F.3d 1145, 1149 (D.C. Cir. 1996) (reversal required when instructions erroneously created hierarchy among offense elements because diverted jurors' focus from finding essential elements beyond reasonable doubt).

show that the IRS made false representations about the nature and scope of its inquiry into Petitioner Lynn's affairs that go to the heart of the government's criminal investigation. The investigative techniques used by the civil arm of the IRS were so outrageous that they offend the notion of fundamental fairness embedded in the Fifth Amendment's Due Process Clause. *See United States v. Russell*, 411 U.S. 423, 432 (1973). The indictment should have been dismissed based on the government misconduct which, in violating the Due Process Clause, is so offensive that it conflicts with any sense of justice. *See Russell*, 411 U.S. at 432; *United States v. Barger*, 931 F.2d 359, 361 (6th Cir. 1991); *United States v. Brown*, 635 F2d 1207, 1212 (6th Cir. 1980).[5]

It is well settled that the IRS may use its civil processes only for legitimate tax purposes. *United States v. Powell*, 379 U.S. 48, 57-58 (1964) (improper to issue civil summons to harass taxpayer, to force settlement of collateral issue or "for any other purpose reflecting on good faith of particular investigation"). Further, the IRS has the burden of demonstrating that its civil actions are motivated by valid tax concerns. *United States v. Genser*, 595 F.2d 146, 150 (3d Cir. 1979), *cert. denied*, 444 U.S. 928 (1979) (IRS must demonstrate a civil purpose for each audit). When determining whether an IRS inquiry is abusive, a court should focus on whether the investigation is motivated by

5. While Petitioner Lynn notes that the Sixth Circuit in a recent decision has declared the due process or outrageous government conduct defense as unavailable, the dissent (*See United States v. Tucker*, 28 F.3d 1420, 1426 (6th. Cir. 1994)) held that the decisions rendered in more than two dozen cases are more than mere dicta. They are clearly a recognition of a valid due process defense. This Court has clearly not held otherwise.

a legitimate tax purpose. *United States v. Zolin*, 809 F.2d 1411, 1416 (9th Cir. 1987).

The IRS must not only demonstrate a legitimate purpose for the investigation, but must also show they pursued that purpose in good faith. *See United States v. Abrahams*, 905 F.2d 1276, 1281 (9th Cir. 1990) (civil audit cannot be used as camouflage for an ulterior non-tax motive); *Zolin*, 809 F.2d at 1416 (purpose must be legitimate and in good faith rather than merely camouflage for an ulterior non-tax motive). The rationale behind the good faith standard is that its application prevents the IRS from becoming an information gathering agency for other governmental agencies. *See Zolin*, 809 F.2d at 1416; *United States v. Serubo*, 604 F.2d 807, 813 (3d Cir. 1979) (wrong for IRS to be used as information gathering agency for other departments).

It logically follows that the IRS may not use its civil audit process to develop or gather information for a parallel criminal investigation. *See United States v. Grunewald*, 987 F.2d 531, 534 (8th Cir. 1993); *United States v. Tweel*, 550 F.2d 297, 299 (5th Cir. 1977). Further, where the Service does cross the line and abuses its civil audit processes, it will be held to have violated the taxpayer's rights. *See Tweel*, 550 F.2d at 299.

In *Tweel*, the court applied this prohibition and held that an IRS agent's failure to apprise the defendant of the criminal nature of the investigation, constituted deliberate deception that should have resulted in suppression of the evidence at trial. *See id.* at 299. Having just completed an earlier civil audit, *Tweel* was again asked to cooperate in a second audit regarding review of his income tax returns for

1966-1968. *See id.* at 298. Although the first audit was civil in nature, the IRS had assigned a special agent to work on it. *See id.* Fearing that his client may be involved in a criminal inquiry, Tweel's accountant asked the IRS if a special agent had been assigned to the second audit as well. *See id.* The IRS informed the accountant that no special agent would be involved and implied that the audit was routine. *See id.* The IRS further misled Mr. Tweel and his accountant by failing to disclose that the audit was initiated at the request of the Department of Justice, Organized Crime and Racketeering Section. *See id.*

On these facts, the court concluded that the IRS had "grossly deceived" Tweel by misrepresenting the nature of the audit. *See Id.* at 299. The court further concluded that the misrepresentation was deliberate and "done in flagrant disregard of the defendant's rights." *Id. Tweel* supports the proposition that IRS misrepresentations regarding the nature of the investigation can effectively deprive taxpayers of their rights.

The IRS acknowledges the impropriety of this abuse of process in their own guidance manual, barring the use of civil audits for criminal purposes. *See Internal Revenue Manual*, § 9311.83 ("[T]he Service shall not attempt to use a civil examination to develop a criminal tax investigation."). Moreover, the case law is clear about the separation of civil and criminal investigations and when the IRS should begin and inform the party of a criminal investigation. *See United States v. Grunewald*, 987 F.2d 531, 534 (8th Cir. 1993). *Grunewald* demarcates the point at which civil audits must be transferred for referral to criminal divisions: "[O]nce an IRS agent has developed firm indications of fraud in civil investigation, the case must be

turned over to the Criminal Investigation Division." *Id.* at 534. The court in *Gruenwald* illuminated the rationale behind this transfer: "[S]ignificantly different rights, responsibilities and expectations apply to civil audits and criminal tax investigations." *Id. Grunewald* states that an abuse of the civil process to gather evidence for criminal investigations "would be a flagrant disregard of individuals rights" and cautions against representations that deliberately deceive or lull taxpayers into incriminating themselves during an audit when activities of an obviously criminal nature are under investigation. *Id.*

Relying on the same rationale of differing rights and responsibilities for different investigations, where the IRS abuses its civil processes to develop criminal investigations, courts have found the IRS exceeded its civil powers. *See Menendez v. United States*, 872 F. Supp. 567, 571 (S.D. Ind. 1994) (IRS acts in bad faith when uses civil investigatory powers to gather evidence for criminal prosecution). *Menendez* indicates that courts will not allow the IRS to "exploit its civil investigatory powers as a de facto grand jury." *Id.*

Applying these decisions, it is clear that the IRS abused its civil audit process by using it to gather evidence for a criminal prosecution of Petitioner Lynn. Further, these investigatory procedures were so deceitful that they offend the notion of fundamental fairness embraced by the Due Process Clause. *See United States v. Russell*, 411 U.S. 423, 432 (1973); *United States v. Barger*, 931 F.2d 359, 363 (6th Cir. 1991).

The investigation into Petitioner Lynn's affairs began in April 1991, after he was informed by letter to contact

Civil Revenue Agent Scott Kennedy. The letter notified Petitioner Lynn that Kennedy had been assigned to conduct an audit of his federal income tax returns for the years 1989, 1990 and 1991. Throughout the course of the audit, Agent Kennedy had several meetings with Petitioner Lynn and his attorney, William Taylor. During the thirty-month civil audit, Petitioner Lynn was never informed of a parallel criminal investigation into his affairs. Both Petitioner Lynn and his attorney gave unchallenged testimony that Agent Kennedy denied the existence of a criminal investigation on several occasions. On one specific occasion, Mr. Taylor directly asked Agent Kennedy if there was "any kind of criminal investigation intended or in progress," to which Kennedy replied in the negative. In addition, Petitioner Lynn testified that in his presence, Kennedy had told Mr. Taylor that the investigation was "just an audit . . . no problem."

The circumstances surrounding Petitioner Lynn's subsequent criminal prosecution, along with documents uncovered later, clearly indicate the aforementioned statements were nothing but false reassurances and misrepresentations. As a result of a contested issue in the civil audit, Petitioner Lynn and his attorney, through the discovery process, received documents from his civil audit. These documents provided boxes for the examiner to check to indicate the type of investigation. In the boxes provided, the IRS checked the box indicating "criminal prosecution/ joint investigation." By its own documents, the IRS has proven that they misrepresented the nature of the audit, abusing it to uncover information for a criminal prosecution of Petitioner Lynn.

Once established, these documents, together with Agent Kennedy's misrepresentations, embody the type of outrageous investigative conduct prohibited by the fundamental notions of fairness embedded in the Due Process Clause. *See United States. v. Barger*, 931 F.2d 359, 363 (6th Cir. 1991) (fundamental fairness by Government in investigating crime is a core component of the Due Process Clause of the Fifth Amendment). Where the government disregards these notions, its conduct is measured to determine whether it is "shocking to the universal sense of justice." *United States v. Russell*, 411 U.S. 423, 432 (1973); *United States v. Brown*, 635 F.2d 1207, 1212 (1980). During the course of its investigation of Petitioner Lynn, the government repeatedly lied to him, even in the face of direct questioning, while simultaneously asking him to turn over incriminating documents and records that they knew would aid in criminal prosecution. By failing to disclose the nature of the investigation, the government let Petitioner Lynn continue to incriminate himself further without regard for his due process rights. This is by any account contrary to established notions of justice, where a defendant is fully aware of his rights. Because the investigation of the government is tainted by this deception and outrageous behavior, the indictment against Petitioner Lynn should have been dismissed.

CONCLUSION

For reasons stated herein, the Petitioner respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

PETER J. STRIANSE
Counsel of Record
TUNE, ENTREKIN & WHITE, P.C.
Attorneys for Petitioner
First American Center
21st Floor
Nashville, Tennessee 37238
(615) 244-2770